

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 18-10084-RGS

GARY BESHARA

v.

RICHARD RUSSELL

ORDER DISMISSING PETITION

January 26, 2018

STEARNS, D.J.

Plaintiff's petition will be DENIED without prejudice for a failure to exhaust administrative remedies in seeking an immediate placement in a Residential Reentry Center. See Dunbar v. Sabol, 649 F. Supp. 2d 1, 3 (D. Mass. 2009) ("As a general rule, the First Circuit has held that a federal prisoner is not permitted to challenge the execution of his or her sentence, and thus, may not seek habeas relief, until all available federal administrative remedies have been exhausted."). Petitioner acknowledges the failure to exhaust and acknowledges that he is presently prosecuting an appeal before the Regional Director of the Bureau of Prisons.¹ Petitioner apparently

¹ If petitioner is not satisfied with the Regional Director's decision, petitioner may then appeal to the General Counsel. 28 C.F.R. §542.15(a)

wishes to proceed on two tracks: that is, by way of an appeal and a petition in this court on grounds of futility and timeliness.

Petitioner's speculation that his administrative appeal before Bureau of Prisons will likely fail is not the equivalent of futility. Rosenthal v. Killian, 667 F. Supp. 2d 364, 367 (S.D.N.Y. 2009) ("Moreover, even if it is likely that . . . [petitioner's] . . . administrative appeals would have been denied, such a showing would not prove futility."). The court also discerns no undue delay or timeliness concerns in the progress of the administrative appeal that would raise due process concerns. Consequently, the petition is DISMISSED without prejudice.

SO ORDERED.

/s/Richard G. Stearns
RICHARD G. STEARNS
UNITED STATES DISTRICT JUDGE

Appeal to the General Counsel is the final administrative appeal. Id.